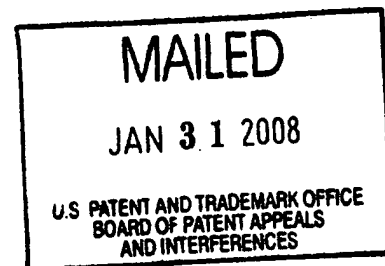


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte: M. VIKRAM RAO

Application 10/631,954



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on January 10, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated January 10, 2007, in response to the Final Rejection mailed May 12, 2006. The Appeal Brief is not in compliance with the new rules of 37 CFR § 41.37(c) effective September 13, 2004. § 37 CFR § 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

* * *

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

Section 37 CFR§ 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR

41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

EXAMINER'S ANSWER

Appeals Conference

On May 16, 2007, the Examiner's Answer was mailed. A review of the Examiner's Answer reveals that it is not in compliance with the appeals conference requirement as set forth in the Manual of Patent Examining Procedure (MPEP) § 1208 (8th ed., rev. 1, Feb. 2003).

According to MPEP § 1207.01:

The participants of the appeal conference should include (1) the examiner charged with preparation of the examiner's answer, (2) a supervisory patent examiner (SPE), and (3) another examiner, known as a conferee, having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal.

On the examiners answer, below the primary examiners signature, the word Conferees: should be included, followed by the type or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held.

The Examiner's Answer was signed by the Examiner charged with preparation and the supervisory patent Examiner, but was not signed by a third person. Appropriate correction is required as required under MPEP § 1208.

Accordingly, it is ORDERED that the application is returned to the Examiner to:

1. to hold the Appeal Brief filed on January 10, 2007, defective;
2. notify Appellant to file a paper providing a Summary of Claimed Subject Matter as required by 37 CFR § 41.37(c)(1)(v);
3. consider the paper providing an amended Summary of Claimed Subject Matter as required by 37 CFR 41.37(c)(1)(v); and
4. to submit a revised Examiner's Answer in accordance with the MPEP § 1207.01; and
5. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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Application 10/631,954

PJN/pgc

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